

HOUSE BILL NO. 218

INTRODUCED BY T. FACEY

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING AND LICENSING WATER HAULERS AS FOOD ESTABLISHMENTS; DEFINING "WATER HAULER"; ~~PROVIDING RULEMAKING AUTHORITY~~; REQUIRING WATER HAULERS TO OBTAIN WATER FROM PUBLIC WATER SUPPLY SYSTEMS OR APPROVED SOURCES; ~~AND AMENDING SECTIONS~~ SECTION 50-50-102 AND 50-50-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, ~~or~~ perishable food dealer, or water hauler not regulated as a public water supply system as provided in Title 75, chapter 6.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants,

1 slaughterhouses, or meat packing plants.

2 (8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
3 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or
4 beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding
5 establishment, catering kitchen, commissary, private organization routinely serving the public, or similar
6 place where food or drink is prepared, served, or provided to the public with or without charge.

7 (b) The term does not include establishments, vendors, or vending machines that sell or serve only
8 packaged, nonperishable foods in their unbroken, original containers or a private organization serving food
9 only to its members.

10 (c) The term does not include an establishment, as defined in 50-51-102, that serves food only
11 to its registered guests.

12 (9) (a) "Food warehouse" means a commercial establishment and buildings or structures in
13 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

14 (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities
15 where brewing occurs.

16 (10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities
17 used in conjunction with the frozen food plant, and a place where individual compartments are offered to
18 the public on a rental or other basis.

19 (11) "Meat market" means a commercial establishment and buildings or structures in connection
20 with it used to process, store, or display meat or meat products for sale to the public or for human
21 consumption.

22 (12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under
23 26 U.S.C. 501.

24 (13) "Perishable food dealer" means a person or commercial establishment that is in the business
25 of purchasing and selling perishable food to the public.

26 (14) "Person" means a person, partnership, corporation, association, cooperative group, or other
27 entity engaged in operating, owning, or offering services of an establishment.

28 (15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form
29 capable of supporting:

30 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24° degrees C (75° degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24° degrees C (75° degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) "Water hauler" means a ~~conveyance equipped with a potable water tank that obtains~~ PERSON ENGAGED IN THE BUSINESS OF TRANSPORTING water for human consumption and use AND THAT IS NOT REGULATED

1 AS A PUBLIC WATER SUPPLY SYSTEM AS PROVIDED IN TITLE 75, CHAPTER 6. THE TERM DOES NOT INCLUDE A PERSON
2 ENGAGED IN THE BUSINESS OF TRANSPORTING WATER FOR HUMAN CONSUMPTION AND USE WHO DOES SO ON A
3 NOT-FOR-PROFIT BASIS THAT IS USED FOR INDIVIDUAL FAMILY HOUSEHOLDS AND FAMILY FARMS AND RANCHES."

4
5 ~~Section 2. Section 50-50-103, MCA, is amended to read:~~

6 ~~"50-50-103. Department authorized to adopt rules. (1) To protect public health, the department~~
7 ~~may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of~~
8 ~~food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures,~~
9 ~~and housekeeping.~~

10 ~~(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of~~
11 ~~baked goods and preserves by nonprofit organizations or by persons at farmer's markets.~~

12 ~~(b) The department and local health authorities may not require that foods sold pursuant to this~~
13 ~~subsection (2) be prepared in certified or commercial kitchens.~~

14 ~~(3) The department shall adopt rules relating to water haulers, including but not limited to~~
15 ~~obtaining water from approved sources, performing regular microbiological tests on hauled water, using~~
16 ~~and disinfecting food grade pumps, hoses, and similar equipment, and maintaining records."~~

17
18 NEW SECTION. Section 2. Water hauler requirements. As a requirement for licensure, a water
19 hauler may obtain potable water only from an approved public water supply system, as defined in
20 75-6-102, or from sources approved and adopted by the department by rule.

21
22 NEW SECTION. Section 3. Codification instruction. [Section 3 2] is intended to be codified as an
23 integral part of Title 50, chapter 50, part 2, and the provisions of Title 50, chapter 50, part 2, apply to
24 [section 3 2].

25
26 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

27 - END -